THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.17094 of 1995

Dt.24-03-2006

Between:

Smt.Konduru Subbamma

..Petitioner

and

1. Govt. of A.P., Revenue Department, rep. by its Secretary

Secretariat Buildings, Hyderabad and others.

..Respondents.

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Oral Order:

On relinquishment of assigned land by Digala Venugopala Raju in Sy.No.439/4 the same was assigned in favour of the petitioner by granting DKT Patta in DKT No.311/A/99 dated 10-10-1989 in which he dug a well and installed electric motor and accordingly issued pattedar pass books in the name of petitioner's eldest son—Konduru Venkatarama Raju. While so on the representation made by the villagers that land in Sy.Nos.439/1, 439/4, 439/11 in all measuring Ac.14.31 cts. of Peddineni Kalva registered as Vagula Kunta is classified as beggar ayacut kunta (rainfed kunta) without registering any ayacut and after completion of medium Irrigation Pincha Project the land was transferred from kunta poramboke to assessed waste

for eventual assignment to landless poor persons by the Collector through his proceedings dated 04-11-1968. On such reclassification, an extent of Ac.2.65 cts. in Sy.No.439/1 was assigned in favour of Surapuraju Nagaraju; Ac.2.60 cts. in Sy.No.439/4 in favour of Konduru Subbamma and Ac.1.80 cts. in Sy.No.439/11 in favour of Y.Krishna Murthy. While so, Venugopal Raju leased out the land to Konduru Venkataramana Raju, who was served with Form I notice on 25-11-1998 under Act 9/77 to show cause as to why the land shall not be resumed to Government. After issuing the notice an eviction order was passed against Venkataramana Raju and the said land was assigned in favour of writ petitioner. While so, the Executive Engineer, I.D. Cuddapah after personal inspection of the land assigned in favour of Y.Krishna Murthy found that the same is situated below full tank level and accordingly R.D.O. issued directions to the M.R.O. for resumption of the land and accordingly the land was resumed. Against the said resumption order Y.Krishna Murthy field an appeal before the R.D.O., who advised him to file appeal before the Joint Collector. On filing the appeal the Joint Collector dismissed the same upholding the order passed by the R.D.O., resuming the land to Government. Aggrieved by the order passed by the Joint Collector Y.Krishna Murthy filed revision before the Commissioner of Land Revenue who allowed the same and set aside the order of the Joint Collector. Kaki China Nagulu and 9 others filed revision before the Government challenging the order passed by the Commissioner of Land Revenue for cancellation of assignment of tank bed lands. The Government in G.O.Ms.No.1176 dated 21-11-1994 after calling the records from the Collector felt continuation of the assignment made in favour of the parties is not justified and accordingly directed the Collector to initiate action for cancellation of all assignment made in tank bed lands. In view of the same, M.R.O. passed the impugned order dated 24-01-1995.

Questioning the legality and the validity of the same the present writ petition is filed contending that once the land is converted into Anadeenam in the year 1968 and assigned the petitioner by granting DKT patta, the M.R.O. without issuing any notice cannot resume the land. Since the revision before the Government is against the order passed by the Commissioner of Land Revenue in case of Y.Krishna Murthy, petitioner’s land cannot be subject matter of appeal and the same cannot be cancelled without any notice to the petitioner.

In the counter filed by the respondents it is admitted about conversion of land into Anadeenam and assignment. It is also admitted that total extent of Ac.7.05 cts. was assigned in favour of three persons on payment of nominal market value towards betterment tax at Rs.300/- per acre. While the matter stood thus on the representation made by the villagers, R.D.O., Cuddapah and the Executive Engineer, I.D. Cuddapah inspected the kunta and felt that the land assigned in favour of Y.Krishna Murthy is below full tank level and requested to cancel such pattas to enable the department to take repairs to the tank to remove obstruction on upstream side of the tank to allow rain water into tank from its catchment in addition to water supply from Pincha Project and to avoid damage to the tank bund and the ayacut and accordingly R.D.O. instructed the M.R.O. to resume the land of Y.Krishna Murthy on the ground that it is required for public purpose. Pursuant to the order passed by the Government M.R.O. issued notice to the petitioner in his reference D13/90 dated 28-12-1994 and only after issuing such notice impugned order came to be passed. In Sy.No.439/1 an extent of Ac.14.31cts. was previously classified as kunta poramboke and consequent on the construction of Pincha Project the necessity to continue the kunta was not necessary and therefore, it was transferred as assessed waste by the Collector, Cuddapah; but subsequently irrigation officials inspected the land and proposed to repair the tank and repaired it with an estimation cost of Rs.4 lakhs as balancing reservoir for supply of water to ayacut lands during the scarcity period which fact has been brought to the notice of the Government and Government after taking into consideration felt that assignment of tank bed lands is irregular and ordered for resumption. Petitioner will be paid necessary compensation after assessing the quantum of compensation.

The Supreme Court in ***HINCH LAL TIWARI v. KAMALA DEVI*** held that to maintain delicate ecological balance tanks need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the revenue authorities having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

Admittedly entire lands are covered by the tank bed lands and on construction of Pincha Project it was converted to Anadeenam and necessary assignments were made. On the complaint made by the ayacutdars/cultivators the revenue officials visited the land and felt that the tank bed land should be restored for benefit and enjoyment of ayacutdars. Petitioner who is assigned after cancellation of the earlier assignment in the year 1989 itself and even the petitioner developed the land by digging the well etc. he is entitled to compensation. Once the land falls within the full tank level, it is necessary to restore the tank for public purpose.

In view of the land declared by the Apex Court in ***HINCH LAL TIWARI***'s case (1 supra) it is the bounden duty of the Government to restore all such small ponds and tanks.

In view of the same, the submission made by the learned counsel for the petitioner that the impugned order was passed in violation of principles of natural justice cannot be accepted. Once the M.R.O. issued notice for resumption of the land and agreed to pay the compensation as per the conditions of patta, petitioner is at liberty to file an application to claim compensation for the loss sustained or can always apply for assignment of alternative land in lieu of compensation.

Writ Petition is accordingly disposed of. No costs.

_____ A.GOPAL REDDY, J.

24-03-2006

Murthy